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TAGS: [PGOV](#) [PREL](#) [IZ](#)

SUBJECT: PLANS FOR ADDRESSING THE DE-BA'ATHIFICATION ISSUE

REF: BAGHDAD 0109

Classified By: Acting DCM Gary A. Grappo, for reasons 1.4 (b) and (d).

¶1. (C) SUMMARY: The Embassy, in close coordination with UNAMI, is pressing PM Maliki, President Talabani, Speaker Samarra'i'e, former PM Allawi, and other key leaders to secure political agreement to defer vetting of candidates until after the March 7 election, with the time between now and then used to appoint a new Accountability and Justice Commission (AJC), as called for in the 2008 de-Ba'athification law, and to establish a transparent process. The Ambassador told Speaker Samarra'i'e January 17 that, given the current trajectory, the USG may not be able to declare the March 7 elections credible and legitimate; Ambassador will deliver the same message to other leaders. The Ambassador and SRSR Melkert agreed January 16 that it would not be wise to leave the decision to the ad hoc judicial panels that have been set up to hear complaints (reftel), as the judges will not be able to handle 500 appeals in the short amount of time available. Calls by VPOTUS to Maliki, Talabani, and Samarra'i'e would significantly complement this strategy. Suggested talking points at para 10; these are the same points being deployed by Ambassador. If necessary, we should consider having the Department or the White House issue a statement expressing our concerns about the process, and the impact it could have on the legitimacy and credibility of the electoral process. END SUMMARY.

VET THE WINNERS APPROACH  
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¶2. (C) The Embassy, working closely with UNAMI, is making a concerted push -- especially in the coming three days -- to secure political agreement on a way forward that will address the challenges posed by the dubious de-Ba'athification process that has led to the disqualification of some 500 candidates (out of some 6500). The way forward requires agreement to defer vetting of candidates until after the March 7 election, with the time between now and then used to appoint a new Accountability and Justice Commission (AJC), as called for in the 2008 de-Ba'athification law, and to establish a transparent process. The Ambassador told Speaker Samarra'i'e January 17, who requested the meeting to discuss the de-Ba'athification issue, that if Iraqi leaders do not correct the current trajectory, in which Chalabi and his supporters were making a mockery of the electoral process, the USG might not be able to declare the March 7 elections credible and legitimate. The Ambassador will repeat this message with PM Maliki, President Talabani and other key political leaders. Emboffs will reinforce points in meetings with senior Iraqi authorities.

¶3. (C) This strategy requires a layered effort, with the Embassy and UNAMI working in tandem, bolstered by calls from the Vice President to key players who can influence the process. We believe the best approach is to work for provisional certification of candidates by the Independent High Electoral Commission (IHEC), and with de-Ba'athification

vetting to be done post-election, only for winning candidates. This would be done before the candidates are sworn in and seated. The Ambassador and SRSG Melkert agreed January 16 that it would not be wise to leave the decision to the ad hoc judicial panels that have been set up to hear complaints (reftel), as the judges will not be able to handle the up to 500 appeals in the short amount of time available. Moreover, they may be unwilling to step into a heated political issue by overturning significant numbers of the IHEC-endorsed AJC findings.

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14. (C) We are also aware that Iraqi political factions have begun intense rounds of discussions to find a political solution to this problem in order to allow for greater transparency and permit candidates to remain on the ballot. These solutions may involve a pre-election solution option. The afternoon of January 17, the Ambassador told ISCI leaders Ammar al-Hakim, who is also anxious to resolve the issue and avoid inflaming sectarian emotions, that we are willing to consider such approaches, provided they are transparent and ensure due process (details septel). The Ambassador also spoke with President Talabani today and will meet with KRG President Barzani January 18 in Erbil to build consensus.

PUBLICATION OF LIST DELAYED  
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15. (C) This "vetting the winners" approach is also favored by SRSG Melkert and the UNAMI Elections Assistance Team, although they caution that the time-frame for implementing such an approach is extremely limited. IHEC plans to publish in local newspapers the names of the 500 candidates it is de-certifying, possibly as soon as January 18. This is in accordance with IHEC's laws and regulations. At the end of that three days, the clock starts ticking for appeals, with candidates allotted three additional days to notify IHEC of their desire to appeal the decision. Melkert cautioned the Ambassador in a January 16 meeting that IHEC has no stomach at all for resisting the Accountability and Justice (AJC) de-Ba'athification recommendations, with the more moderate commissioners "deathly afraid" of accusations of supporting Ba'athism if they try to offer any alternative to a simple rubber-stamping of the AJC's findings on candidates. In another sign of IHEC's susceptibility to political pressure, we learned that IHEC had sent the list to newspapers on January 16 for publication the next morning, but then pulled publication at the last minute late January 16 at the instruction of PM Maliki and the AJC. UNAMI believes the list was pulled to make substantive as well as clerical changes. We assess that the decision may also be an initial response to the strong expressions of concern by the Embassy and UNAMI. Late January 17, IHEC again asked papers to delay publication, saying a new list would be provided the next day, which would mean publication on January 19.

DEPLOYING POINTS TO COMPEL GOI LEADERS TO TAKE ACTION  
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16. (C) In the first of the Ambassador's series of engagements with senior leaders, he told Speaker Samarraie January 17 in clear, strong terms that the USG does not support the current plan to decertify 500 candidates in a questionable process that could inflame sectarian tensions. It was a long, difficult meeting with some tough exchanges but Samarraie began near the end of the meeting to move toward the USG position supporting a "vet the winners" approach. He inquired pointedly about which other political leaders the Ambassador had seen or planned to see. He also pleaded at several points for the USG not to walk away from Iraq's democratic process, but to help Iraq fix any procedural irregularities. The Ambassador reassured the Speaker of unambiguous U.S. support for democracy in Iraq but also repeatedly underscored that the current runaway process risked undermining public confidence in the elections and possibly provoking sectarian violence.

POSSIBLE VP CALLS TO FOLLOW UP

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17. (C) Calls from VPOTUS to PM Maliki, President Talabani, and Speaker Samarra'i would strongly complement this strategy. We will also be recommending that Ayatollah Sistani underscore to Maliki and others the need to address the situation. Following a meeting January 16 with the Ambassador, former PM Allawi told the Ambassador January 17 that he had asked Egyptian President Mubarak to weigh in with the PM. If necessary, we should consider having the Department or the White House issue a statement expressing our concerns about the process, and the impact it could have on the legitimacy and credibility of the electoral process. This is a step that UNAMI's Melkert is reticent to take at this point, saying he does not want to escalate too far too fast, but may be willing to reconsider depending on developments over the next 48 hours.

SOME UNAMI PROCEDURAL FIXES  
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18. (C) In tandem with the "post-election vetting" proposal, UNAMI is also shopping two procedural "fixes" that could repair some of the worst damage, although neither would reduce significantly the total numbers of candidates disqualified. They are useful fallbacks, however, given the narrow three-day window for getting a "vetting the winners" approach adopted at IHEC. The first involves pressing IHEC (and their political masters) not to disqualify "incumbents" (ministers, COR members, and those who stood for election -- and vetting -- in the 2005 national elections or the January 2009 provincial elections). This would likely "save" only 16 candidates, but those saved would include the significant ones, including Saleh al-Mutlaq. (NOTE: MinDef Abd al-Qadir al-Mufriji's name has been removed from the most recent, i.e., January 16 evening, version of the list that the AJC sent to IHEC. END NOTE)

19. (C) UNAMI also plans to keep the pressure on IHEC to act in a very restricted way on the second AJC letter signed by Chalabi, which listed 11 entities (parties) to be de-certified. If implemented in a limited way, which is the way IHEC is leaning, this would involve eliminating 11 Secretaries Generals of the entities (if all are candidates, which is not clear) and striking the names of those parties from the ballot. But members of these entities could still run as members of the larger coalition. There is significant support on IHEC for this approach, given explicit wording in IHEC law giving it the exclusive authority to certify "entities," but the ISCI-Da'wa commissioners, who have led the de-Ba'athification charge, are not that enthusiastic, according to Melkert. The AJC was initially pressing for a much more ambitious implementation, which could have involved the dis-qualification of another 1,600 candidates, although the mounting political pressure seems to have forced them off this position.

ALLAWI CALLS CHALABI AN IRANIAN AGENT  
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19. (C) Allawi told the Ambassador January 16 that he believes Chalabi and his deputy Ali Faisal al-Lami are acting under instructions from Iran (see septel). He said the de-Ba'athification effort was not only aimed at eliminating anti-Iranian Iraqis, but also intended to break Allawi's Iraqiyya coalition (announced January 16).

POINTS TO BE DEPLOYED  
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110. (C) Points to be deployed for the calls and meetings:

-- USG is deeply concerned about the decision by IHEC to accept the list of 500 names of candidates recommended for disqualification by the Accountability and Justice Commission.

-- This is a dangerous step that raises serious questions about the Iraqi government's commitment and ability to hold credible and legitimate elections on March 7.

-- We are specifically concerned about:

- the lack of transparency and due process;
- the standing and statutory authority of the Accountability and Justice commission;
- the existence and type of evidence the commission used to disqualify candidates;
- the clear conflicts of interests involving Chalabi and al-Lami, who are themselves candidates and known as acting in concert with Iranian wishes; and
- the presumption of guilt for candidates on the list.

-- The two appeals processes will not be able to do a credible job of evaluating all these cases. The AJC appeals route will take too long (up to 90 days) and relies on an untested appeals panel.

-- The IHEC route, going through the Electoral Judicial Panel, is faster, but cannot possibly handle the up to 500 appeals in a credible manner. The caseload is too overwhelming. Moreover, IHEC is under pressure to finalize the list of candidates within the next few days in order to be able to print ballots in time for March 7.

-- The AJC determination and IHEC's decision to accept it are undermining the possibility of credible legitimate elections.

-- Moreover, there is a real threat that this disqualification will spark a boycott of the elections and re-ignite sectarian conflict that will take us back, not forward.

-- We need to find a way to address this now.

-- IHEC should provisionally certify the candidates now, and then "vet the winning candidates" BEFORE they are seated. This will allow the electoral process to move forward in a credible and legitimate manner and would be consistent with the principle that defendants are innocent until proven guilty, not the other way around.

-- This gives the COR time to appoint a new Accountability and Justice Commission and strengthen its procedures to ensure more transparency and fairness.

-- You need to be aware that the USG is closely evaluating whether we will be able to certify that these elections are fair, legitimate, and inclusive, given the lack of transparency, arbitrary decision-making, and conflicts of interest apparent in these actions.

-- We are at a critical juncture in Iraq's history. These elections are too serious for Iraq's future to allow such disruptions to undermine Iraq's democratic progress.

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